IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.633 OF 2007

Mrs.Geeta Shivkant Chaudhary ...Applicant.
V/s.
The State of Maharashtra & Anr. ...Respondents.

Mr.R.Satyanarayanan, adv. for the Applicant.
Mr.D.P.Adsule, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 14th March, 2007.

P.C.:

1. Heard Mr.Satyanarayanan, the learned counsel for the applicant. Perused the relevant documents filed with this application.

2. To state in brief, the respondent no.2 filed a complaint under Section 138 of the Negotiable Instruments Act against 5 persons. Accused no.1 is Geeta Marine Services Private Limited. Accused nos.2, 3 and 4 are the directors and accused no.5 is an employee of the said company. It was alleged that accused nos.2,3 and 4, who are the directors of accused no.1 are/were in charge of and responsible to the accused no.1 company for the conduct of its business during the relevant period. The accused had handed over six cheques of Rs.5 lakh each to the complainant towards the discharge of their liability arising out of loan taken

by them from the complainant by an account payee cheque dated 20th December, 2004 for the amount of Rs.30 lakhs. The cheques were drawn on Oriental Bank of Commerce Powai Branch. Six cheques were deposited with the UCO Bank. However, the cheques were returned with memorandum dated 8.9.2005 from the bank informing that cheques were dishonoured on account of 'Funds Insufficient'. On 15-9-2005, the complainant issued notice to all the accused persons who received the same on or about 16th September, 2005. In spite of receiving the notice, they failed to make payments. Therefore, the complaint was filed and process was issued by the Metropolitan Magistrate against all the 5 accused persons.

3. The present applicant, who is accused no.4, filed revision application no.77 of 2006 before the Sessions Court, Mumbai challenging the issuance of process against her. According to her, she was no more director of the company during the relevant period and therefore, she is not responsible for the nonpayment of the said cheques. After hearing the parties, VIIth Ad-hoc Additional Sessions Judge dismissed revision application mainly on the ground that the notice was issued and it was received by the present applicant but she had not replied, disputing her liability. Being

aggrieved by dismissal of the revision application, the applicant has preferred the present application invoking inherent powers of this Court under Section 482 of the Cr.P.C.

4. It is well settled position that there can not be any second revision application at the behest of the party, who had filed revision application challenging an order and that application has been rejected. Technically this is not second revision application but an application under Section 482 of the Cr.P.C. invoking inherent powers of this Court.

5. Mr.Satyanarayanan mainly relied upon **Saroj Kumar Poddar** reported at MANU/SC/0711/2007, in support of his contention that in the complaint it is not sufficient to mention that some of the accused persons were directors of that company but it is also necessary to specifically mention that the person sought to be made liable was infact in charge of or responsible to the company for the conduct of the business of the company. He referred to paragraph 9 of the aforesaid judgment wherein facts of that case were mentioned. It may be reproduced as follows:

"9.The purported averments which have been made

> in the complaint petitions so as to make the Appellant vicariously liable for the offence committed by the Company read as under:
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> That the Accused No.1 is a public limited company incorporated and registered under the Companies Act, 1956, and the accused 2 to 8 are/were its Directors at the relevant time and the said company is managed by the Board of Directors and they are responsible for the incharge of the conduct and business of the company - Accused No.1. However, cheques referred to in the complaint have been signed by the Accused No.3 and 8, i.e., Shri K.K.Pilania and Shri N.K.Munjal for and on behalf of the Accused Company No.1.

6. He also referred to the paragraph 12 in the said judgment wherein Their Lordships had quoted judgment of the three-Judge Bench of the Supreme Court in **S.M.S. Pharmaceuticals Limited v. Neeta Bhalla and Anr. (2005) 8 Supreme Court Cases 89** and particularly, the following observations.

> 12.....It was further opined:
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> To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That Respondent fails within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first

instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

7. Section 141 of the Negotiable Instruments Act reads as follows:

"141.Offences by companies.-

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, **was in charge of, and was responsible to, the company for the conduct of the business of the company,** as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with

> the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."
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> *(emphasis supplied)*

From the language of sub-section 1, it is clear that if the person committing an offence under Section 138 is a company, every person who, at the time of offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence. This provision is made by the legislature so that the directors of the company, who may not be actually responsible for the day-to-day carrying out of business may not be unnecessarily implicated in criminal case under Section 138 and are not required to face the trial.

8. In the present case, the accused no.1 is a private limited company. It appears to be owned and managed by the members of one family. Accused no.3 is son of applicant no.2 and applicant no.4 is wife of applicant no.2. In paragraph 2 of the complaint, it is specifically mentioned that *accused no.2, 3 and 4 are the directors of accused no.1 and are/were in charge of*

and responsible to accused no.1 for the conduct of the business during the relevant period. Thus, it is clearly averred that the accused nos.2 to 4 were in charge and responsible for the conduct of the business of the company. It is not a case of public limited company, where a large number of persons may be shareholders and also the board of directors may consist of a large number of directors. It appears to be a private limited company of family run by 3 members of the family. In my opinion in paragraph 2, the complainant has made specific averment against the accused nos.2 to 4. The present applicant, being accused no.4, is also covered by the same. The learned Sessions Court noted that a notice was issued by the complainant to the company as well as all the three directors and the accused no.5 before filing the complaint under Section 138 of the Negotiable Instruments Act. The present applicant in spite of receiving the notice, did not reply to the same. If she was infact not responsible for the conduct of the business during the relevant period, she could have replied to the complainant. Before this Court no document is produced to show that the present applicant was not the director of accused no.1 company and was not responsible for the conduct of the business of the same.

9. Taking into consideration all the facts, I find that this is not a fit case, where this Court should invoke inherent powers under Section 482 of the Cr.P.C.

10. Application stands dismissed.

(J.H.Bhatia,J.)